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CLEARINGHOUSE RULE 94-225

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Sections PSC 109.07 and 109.08 of option 1 and ss. PSC 109.06 and 109.07 of option 2 state that no tax equivalent shall be determined for municipal sewer systems and town sanitary district water utilities, respectively. According to the Public Service Commission (PSC) staff, this is the case because municipal sewer systems are not public utilities, by definition in s. 196.01 (5), Stats., and because town sanitary districts are not municipalities under s. 66.069, Stats.; therefore, town sanitary district water utilities are not municipal utilities for purposes of that section. While the former assertion is clearly correct, the latter is not clearly so. “Municipality” is not a defined term under s. 66.069, Stats., and it is defined in various ways for different sections throughout ch. 66, Stats. However, s. 66.066 (1) (a), which applies to municipal utilities, including water utilities, defines “municipality” to include town sanitary districts, suggesting that the Legislature may have viewed town sanitary district water utilities as municipal utilities. PSC rules, dating back at least to 1956, have followed the interpretation that town sanitary district water utilities are not municipal utilities. In light of the foregoing, this long-standing interpretation may warrant reconsideration.

2. Form, Style and Placement in Administrative Code

a. The statement of statutory authority states that s. 66.069 (1) (c), Stats., provides authority for the PSC to promulgate the rule. The section also should be cited as being interpreted by the rule.

b. The treatment clause for SECTION 1 of both options should read simply “Chapter PSC 109 is repealed and recreated to read:”. The title, CHAPTER PSC 109, TAX EQUIV-

ALENT FOR MUNICIPAL UTILITIES, should be centered on the page below the treatment clause.

c. Notations throughout the rule indicating which sections are new and which sections are modifications of current rule language should be omitted. Since both the current and proposed rules are so short, this information could easily be presented in the analysis. Alternatively, readers comparing the existing and proposed text can readily determine which language is new and which is existing.

d. Section PSC 109.01 of both options should end with the following language: "...considered in determining utility rates under s. 66.069 (1) (c), Stats."

e. In s. PSC 109.02 (2) of option 1 and s. PSC 109.02 (1) of option 2, the word "of" should be replaced by the words "specified in." In s. PSC 109.02 (4) of option 1, "Department of Revenue" should be written in lower case.

f. In s. PSC 109.03 of option 1, the titles to the subsections should all be in capital letters. In sub. (2), the notation "s." should be inserted before each cross-reference to s. PSC 109.05. Finally, in sub. (2), the references to the various methods all should be in lower case.

g. In s. PSC 109.03 (3) (a) of option 1 and s. PSC 109.03 (a) of option 2, the phrase "the percentage set forth in s. 76.28 (2) (c) 2" could be replaced by "3.19%." If the statutory cross-reference is retained, the notation ", Stats." should be inserted after the citation and a note could be included indicating that, as of the effective date of the rule, the statutory percentage is 3.19%. Also, the phrase "except for a natural gas utility" should be replaced by the phrase "except as provided in par. (b)." The term "gross annual revenues" should be replaced by the term "gross revenues," since that term is defined for this chapter. Some other means should be used to indicate that the rule refers to gross revenues of a certain year. Finally, comments made in this paragraph also apply to the phrases "the percentage set forth in s. 76.28 (2) (c) 1" and "gross annual revenues" found in s. PSC 109.03 (3) (b) of option 1 and s. PSC 109.03 (b) of option 2.

h. The titles of all of the sections following s. PSC 109.05 in both options should be underscored and should be expressed in all capital letters.

i. Section PSC 109.05 (1) of option 1 should begin with the phrase "Except as provided in sub. (2)."

j. Section PSC 109.06 in option 1 and s. 109.05 in option 2 should begin with the phrase "Receipts from sales to customers outside of the municipal boundaries...."

k. Section PSC 109.02 (1) in option 2 should be numbered s. PSC 109.02 and the text of the section should be rewritten to read: "In this chapter, 'gross revenues' has the meaning specified in s. 76.28 (1) (d), Stats."

l. Section PSC 109.03 of option 2 should be restructured. The words "Gross Receipts Method," apparently intended as a title, should be deleted. In addition, the phrases "Under the gross receipts method" at the beginning of pars. (a) and (b) may also be omitted, since only one

method is offered in this option. The material numbered as pars. (a) to (c) should be renumbered as subs. (1) to (3) and the five unnumbered paragraphs following what is now numbered par. (c) should be numbered as pars. (a) to (e). This change will necessitate cross-reference changes in ss. PSC 109.04 and 109.05 of option 2.

Subsection (3) (a), as renumbered according to the preceding comment, should begin with the phrase “In the calendar year in which the effective date of this order falls... [revisor inserts date]” The following paragraph should begin with the phrase “In the year of the effective date of this order... [revisor inserts date]” Subsequent paragraphs should follow a similar format. For example, sub. (3) (b) should read: “In the first calendar year that begins after the effective date of this order [revisor inserts date] the tax equivalent shall be 20% of gross revenues or the prior year’s tax equivalent amount, whichever is less.” In addition, all of these paragraphs should be written in full sentences, using the same general format as the first paragraph.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PSC 109.02 (4) of option 1 defines “ratio of assessed value to full value” as a percentage, but it does not include enough information to calculate a percentage. Should the definition refer to “the percentage of recommended full value of total real and personal property represented by the assessed value of total real and personal property...”?

b. Nothing in option 1 specifies how the tax equivalent is to be calculated under the transition method discussed under s. PSC 109.03 (2). All the rule says is that the resulting amount must be intermediate in magnitude between the results of the gross book value method and the gross receipts method. Is a municipal utility allowed to use any method of computation it chooses, so long as the result is intermediate between the results of the other two methods? Is this what the phrase “moves toward” is supposed to mean?

c. Section PSC 109.04 of option 1 and of option 2 should refer to a municipal utility “that is created after July 1, 1995.”

d. Notwithstanding its use in s. PSC 109.03 (c) of option 2, “transition” is not a verb. The phrase “will be allowed to transition” should be replaced by the phrase “may make a transition.” In addition, that sentence should indicate from what the utility is making a transition (i.e., from its previous method of calculating a tax equivalent).